(5)

Case No. 03-1488

Supreme Court, U.S.
FILED
NOV 12 2004
OFFICE OF THE CLERK

In The Supreme Court of the United States

ULYSSES TORY AND RUTH CRAFT,

Petitioners,

v.

JOHNNIE L. COCHRAN, JR.,

Respondent.

On Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District, Division One

JOINT APPENDIX

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Petition For Certiorari Filed April 26, 2004
Certiorari Granted September 28, 2004

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Los Angeles Superior Court
Case Number BC239[illegible]

* * *

10/09/2001 First Amended Complaint
Filed by Attorney for Plaintiff/Petitioner

* * *

10/19/2001 Answer to Amended Complaint (DEFTS' ANSWER TO PLFF'S AMENDED COMPLAINT FOR PRELIMINARY AND PERMANENT/TEMPORARY INJUNCTIONS RESTRAINING ORDER; [PROPOSED] VERIFIED FIRST AMENDED COMPLAINT FOR DAMAGES)
Filed by Defendant & Defendant in Pro Per

* * *

04/11/2002 Objection Document (DEFT TORY'S OBJECTION TO PERMANENT INJUNCTION)
Filed by Defendant & Defendant in Pro Per

04/11/2002 Objection Document (DEFT TIRY's [sic] OBJECTIONS TO STATEMENT OF DECISION PURSUANT TO RULE OF COURT SECTION 232 AND CODE OF CIVIL PROCEDURE SECTION 632)
Filed by Defendant & Defendant in Pro Per

* * *

04/24/2002 Order (PERMANENT INJUNCTION)
Filed by Attorney for Plaintiff/Petitioner

04/24/2002 Statement of Decision (PURSUANT TO RULE OF COURT SECTION 232 AND CODE OF CIVIL PROCEDURE SECTION 632)
Filed by Attorney for Plaintiff/Petitioner

06/12/2002 Notice of Appeal
Filed by Appellant

* * *

06/24/2002 Notice of Appeal
Filed by Appellant

* * *

Proceedings Held

03/19/2002 at 08:30 am in department 41, Ronald M. Sohigian, Presiding Jury Trial (5 DAY ESTIMATE) – **Full Day of Trial Held**

03/20/2002 at 08:30 am in department 41, Ronald M. Sohigian, Presiding Court Trial – Long Cause – **Half Day of Trial Held**

03/21/2002 at 09:30 am in department 41, Ronald M. Sohigian, Presiding Court Trial – Long Cause – **End of Trial**

* * *

04/24/2002 at 08:30 am in department 41, Ronald M. Sohigian, Presiding Other . . . (HEARING RE PROPRIETY OF STATEMENT OF DECISION AND OTHER MATERIALS) – **Completed**

CALIFORNIA APPELLATE COURTS
Second Appellate District
B159437

Date	Description	Notes
06/19/2002	Notice of appeal lodged/received.	n/a 6/12/02 Ulysses Tory
	* * *	
07/03/2002	Notice of appeal lodged/received.	n/a 6/24/02 Ruth Craft
	* * *	
01/09/2003	Petition for writ of supersedeas filed.	/request to stay restraint on free speech.
01/16/2003	Order filed.	Denying Petition for Writ of Supersedeas filed 01/09/03.
01/24/2003	Record on appeal filed.	C-1, R-1
	* * *	
02/24/2003	Appellant's opening brief.	Attorney: Jassy, Jean-Paul Party: Tory, Ulysses Attorney: Jassy, Jean-Paul Party: Craft, Ruth Attorney: Jassy, Jean-Paul Party: Tory, Ulysses

* * *

03/24/2003	Motion/application to augment record filed.	of resp re attached r-1
	* * *	
04/11/2003	Augmentation granted. (See order.)	filed 3/24/03 by resp Cochran; rt (dtd 4/24/02) attached to motion
	* * *	
06/20/2003	Respondent's brief.	Attorney: Cole, Jonathan Party: Cochran, Johnnie
	* * *	
07/10/2003	Appellant's reply brief.	Attorney: Jassy, Jean-Paul Party: Tory, Ulysses
	* * *	
10/28/2003	Cause argued and submitted.	
10/29/2003	Opinion filed.	
11/05/2003	Rehearing petition filed.	by appellants
11/06/2003	Petition for rehearing denied.	
12/09/2003	Petition for review in Supreme Court received	
12/15/2003	Record transmitted to Supreme Court.	1x6"
01/28/2004	Petition for review denied in Supreme Court.	

02/05/2004	Record returned from Supreme Court.	1x6"
02/18/2004	Remittitur issued.	
02/18/2004	Case complete.	
	* * *	
08/19/2004	Filed request to publish opinion.	by Balboa Island Village Inn
09/07/2004	Letter sent to:	Supreme Crt stating if Court still had jurisdiction they would now grant request to publish the opinion. The Court is forwarding the request to the Supreme Court with recommendation to grant (see letter)

CALIFORNIA APPELLATE COURTS
Supreme Court
S121121

Date	Description	Notes
12/08/2003	Petition for review filed	counsel for appellant Ulysses Tory, et al.
12/12/2003	Record requested	
12/30/2003	Answer to petition for review filed	by counsel for resp. (J. Cochran, Jr.) (40k)
01/09/2004	Reply to answer to petition filed	by counsel for aplt. (Ulysses Tory, et al.,)
01/28/2004	Petition for review denied	George, C.J., was absent and did not participate. Kennard, J. and Brown, J., are of the opinion the petition should be granted.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOHNNIE L. COCHRAN, JR. Plaintiff, vs. ULYSSES TORY; and DOES 1 through 50, inclusive, Defendants.	CASE NO. BC239405 **[PROPOSED] VERIFIED FIRST AMENDED COMPLAINT FOR DAMAGES FOR:** 1) Libel; 2) Libel per se; 3) Slander; 4) Slander per se; 5) Invasion of Privacy (False Light Publicity) 6) Temporary Restraining Order, Preliminary and Permanent Injunctions

INTRODUCTORY ALLEGATIONS

(Filed Oct. 9, 2001)

1. At all relevant times herein, Plaintiff JOHNNIE L. COCHRAN, JR. ("COCHRAN" or "Plaintiff") was and is a resident of Los Angeles County, State of California, and

an attorney at law, duly licensed to practice law before all courts of the State of California.

2. Plaintiff is informed and believes and on that basis alleges that at all times mentioned herein, Defendant ULYSSES TORY ("TORY or "Defendant") is a resident of the County of Los Angeles, in the State of California.

3. Plaintiff is unaware of the true names and capacities of those defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants using fictitious names. Plaintiff will amend this complaint to allege the DOES true names and capacities when that information becomes known. Plaintiff is informed and believes and on that basis alleges that each of these fictitiously named defendants are legally responsible in some manner for the actions and inactions alleged herein and that the injuries suffered by plaintiff as alleged throughout this complaint were proximately caused by these actions and inactions. Plaintiff further alleges, based upon information and belief, that each defendant sued herein was acting as the agent or employee of each of the other defendants, and in doing the acts alleged herein was acting within the course and scope of such agency and/or employment, and/or aided, abetted, cooperated with, and/or conspired with one another to do the acts alleged herein.

4. At all relevant times mentioned herein defendant DOES 1 through 50, inclusive, were residents of Los Angeles County.

STATEMENT OF FACTS

5. This complaint concerns a pattern of ongoing acts of defamatory harassment committed by defendant TORY, and DOES 1-50, commencing on or around January 1, 2000 and continuing to the present day. Beginning on or around January 1, 2000, defendants, and each of them, made written statements on or around the premises of COCHRAN's law office building located at 4929 Wilshire Boulevard, in the City of Los Angeles, which included, but were not limited to, false statements that (i) COCHRAN owed a substantial sum of money to TORY, based upon alleged breaches of oral and written agreements with TORY; (ii) that COCHRAN owed financial debts to TORY based upon alleged past breaches of said oral and written agreements; (iii) that COCHRAN acted in a dishonest manner during prior legal representations of TORY; and, (iv) that COCHRAN is unfit to practice law, due to the aforementioned alleged acts of moral turpitude. Said statements were plainly visible to all individuals who were in or around the premises at 4929 Wilshire Boulevard, when defendants were present.

6. TORY, DOES 1-50, and TORY's agents, employees, and/or servants, orally broadcast statements and chanting similar to those set forth in paragraph 5, through the use of blow-horns and over loudspeakers to passers by, which were plainly heard to all individuals who were in or around the premises of 4929 Wilshire Boulevard, when defendants were present.

7. All of the published statements as set forth by defendants in paragraphs 5 and 6, either named plaintiff directly and/or were made of and concerning plaintiff and

was so understood by those who read and/or hear the publications.

8. ***All of the published statements as set forth by defendants in paragraphs 5 and 6 were, and continue to be, false. Defendants, and each of them, knew such statements were false, yet nevertheless knowingly stated and published such statements to third parties with actual knowledge of their falsity and continue to do so to this day.***

9. Despite TORY's publicized claims, the ***true*** facts and circumstances concerning COCHRAN and TORY's prior relationship are set forth as follows:

(a) TORY retained COCHRAN on a contingency basis in early 1983 in the matter of *Tory, et al. v. City of Los Angeles, et al.* (C 473 832).

(b) On or about July 18, 1985, TORY inexplicably wrote COCHRAN a threatening demand letter for $10 million dollars accusing COCHRAN of conspiring against him.

(c) COCHRAN responded to Tory by letter dated July 30, 1985 and subsequently sought to be relieved of counsel in the matter of *Tory, et al. v. City of Los Angeles, et al.*

(d) ***TORY never paid COCHRAN any monies whatsoever, for legal services or otherwise.***

(e) A decade or so after the fact, by letter dated July 6, 1995, TORY demanded COCHRAN return legal fees paid to a third party, Earl E. Evans, Esq., for dissatisfactory legal services apparently rendered by Mr. Evans. Notably, COCHRAN and Mr. Evans, as former associates,

have not had a formal affiliation since the late 1970s. Further, all such purported claims for repayment of legal fees paid in the mid-80's are not only without factual or legal legitimacy but now, time barred as a matter of law.

(f) COCHRAN has never received any payment from TORY in the form of legal fees or for anything else and thus, ***does not owe TORY any monies whatsoever.***

(g) TORY has been sporadically picketing COCHRAN outside of his place of business located at 4929 Wilshire Blvd., Los Angeles, CA 90010 on an on-again and off-again basis with placards since the late 1990s until the present. Most recently, the weekly picketing resumed on or about January 1, 2000 and has continued regularly to date.

(h) Placards used by TORY are untruthful and misleading in nature. For example, one placard exemplifies libel per se by directly attacking COCHRAN's character and integrity, i.e., "Johnnie is a crook, a liar and a thief. Can a lawyer go to heaven? Luke 11:46." Another placard misleadingly implies that TORY received poor legal representation from the COCHRAN. "Hey Johnnie How Much Did They Pay$$You to F__k Me?." **Both types of claims are without any factual and/or evidentiary substantiation whatsoever.**

(i) Despite purportedly egregious misconduct by COCHRAN against TORY, no formal disciplinary action has resulted from TORY's complaints nor has he successfully pursued any formal legal remedies related thereto, choosing instead to take the law into his own hands for his own brand of "justice."

(j) ***TORY has received at least, three (3) previous monetary settlements for confidential sums after picketing outside Union Bank of California, Sanwa Bank and Shell Oil Company in the 1990s.***

(k) TORY is in the business of professionally extorting monies from innocent persons and business entities through his unlawfully picketing of falsehoods – COCHRAN is merely his latest target.

(l) Despite repeated requests, TORY has refused to cease his picketing efforts without a similar monetary "settlement" payment from COCHRAN and has promised to picket for "however long it takes" until his demands for a pay-off are met.

(m) TORY is the organizer and leader of the band of picketers.

(n) TORY's conduct has been worsening recently as the band of picketers has begun to supplement the placards with loud chanting of obscene statements, i.e., "Johnnie, pay me my mother-f__king money!;" "Johnnie, you are a cheat!;" and "If you come down here, I'll kick your ass!" Said conduct in its entirety is intentionally targeted at preventing person(s) from entering COCHRAN's place of business for legal services and creating a negatively charged and ominous environment.

(o) As feared, TORY's conduct has only continued to worsen presently as COCHRAN continues to refuse paying TORY to stop.

(p) COCHRAN has knowledge and belief that persons have been intimidated by TORY's conduct and have failed to seek legal counsel as a direct result thereof; thus, causing COCHRAN unknown loss of business and

irreparable harm to his law practice as well as to his professional and personal reputation.

(q) To date, TORY's conduct has worsened as he continues to unlawfully picket COCHRAN's place of business, located at 4929 Wilshire Boulevard through the (i) use of false statements depicted on placards; and, (ii) broadcasting of false statements to passers by through blow horns and loudspeakers.

FIRST CAUSE OF ACTION

(Plaintiff JOHNNIE L. COCHRAN, JR., Against All Defendants for Libel)

10. Plaintiff incorporates and realleges all previous allegations contained in this Complaint as though fully set forth herein.

11. As a result of the published statements as set forth by defendants in paragraphs 5 and 9, defendants, and each of them, have published false and unprivileged statements made by writing which have exposed plaintiff to hatred, contempt, ridicule, obloquy, and have injured him in his occupation because in short, by falsely claiming that plaintiff is a liar and a thief, expressly and impliedly unfit for the practice of law.

12. As a proximate result of the maliciously false and defamatory written publication of statements to third parties as set forth by defendants in paragraphs 5 and 9, plaintiff has suffered loss to his reputation, shame, mortification, and hurt feelings all to his general damage to be determined according to proof.

13. As a further proximate result of the above-described publications, plaintiff has suffered special damages, including but not limited to injury to plaintiff's business, profession, and occupation, all to his injury in the sum according to proof but no less than $250,000.00.

14. The above-described publication was published by defendants, and each of them, with actual malice, oppression and fraud in that they were aware at the time of the falsity of their publication and thus, made said publications in bad faith out of hatred and ill-will misdirect towards plaintiff, without any regard for truth. As a result plaintiff seeks an award of exemplary damages against all defendants for libel.

SECOND CAUSE OF ACTION

**(Plaintiff JOHNNIE L. COCHRAN, Jr.
Against All Defendants for Libel Per Se)**

15. Plaintiff incorporates and realleges all previous allegations contained in this Complaint as though fully set forth herein.

16. As a result of the publication of false and unprivileged statements as set forth by defendants in paragraphs 5 and 9, which are without the necessity of explanatory matter, defendants, and each of them, have published statements which are libelous on their face and thus, constitute libel per se.

17. As a proximate result of the maliciously false and defamatory publication of statements to third parties as set forth by defendants in paragraphs 5 and 9, plaintiff has suffered loss to his reputation, shame, mortification,

and hurt feelings all to his general damage to be determined according to proof.

18. The above-described publication was published by defendants, and each of them, with actual malice, oppression and fraud in that they were aware at the time of the falsity of their publication and thus, made said publications in bad faith out of hatred and ill-will misdirect towards plaintiff, without any regard for truth. As a result plaintiff seeks an award of exemplary damages against all defendants for libel per se.

THIRD CAUSE OF ACTION

**(Plaintiff JOHNNIE L. COCHRAN, JR.,
Against All Defendants for Slander)**

19. Plaintiff incorporates and realleges all previous allegations contained in this Complaint as though fully set forth herein.

20. As a result of the published statements as set forth by defendants in paragraphs 6 and 9, defendants, and each of them, have orally published false and unprivileged statements which accuse plaintiff of crime(s) of theft and misappropriation and which are intended to directly injure plaintiff in his profession and business by imputing to him a reputation as a dishonest, incompetent and disreputable attorney, thus generally disqualifying him from the practice of law.

21. As a proximate result of the maliciously false and defamatory publication of statements to third parties as set forth by defendants in paragraphs 6 and 9, plaintiff has suffered loss to his reputation, shame, mortification,

and hurt feelings all to his general damage to be determined according to proof.

22. As a further proximate result of the above-described oral publications, plaintiff has suffered special damages, including but not limited to injury to plaintiff's business, profession, and occupation, all to his injury in the sum according to proof but no less than $250,000.00.

23. The above-described publication was published by defendants, and each of them, with actual malice, oppression and fraud in that they were aware at the time of the falsity of their publication and thus, made said oral publications in bad faith out of hatred and ill-will misdirect towards plaintiffs, without any regard for truth. As a result plaintiff seeks an award of exemplary damages against all defendants for slander.

FOURTH CAUSE OF ACTION

(Plaintiff JOHNNIE L. COCHRAN, Jr. Against All Defendants for Slander Per Se)

24. Plaintiff incorporates and realleges all previous allegations contained in this Complaint as though fully set forth herein.

25. As a result of the oral publication of false and unprivileged statements as set forth by defendants in paragraphs 6 and 9, which are without the necessity of explanatory matter, defendants, and each of them, have published statements which are slanderous on their face, and thus, constitute slander per se.

26. As a proximate result of the maliciously false and defamatory publication of statements to third parties

as set forth by defendants in paragraphs 6 and 9, plaintiff has suffered loss to his reputation, shame, mortification, and hurt feelings all to his general damage to be determined according to proof.

27. The above-described publication was published by defendants, and each of them, with actual malice, oppression and fraud in that they were aware at the time of the falsity of their publication and thus, made said publications in bad faith out of hatred and ill-will misdirect towards plaintiff, without any regard for truth. As a result plaintiff seeks an award of exemplary damages against all defendants for slander per se.

FIFTH CAUSE OF ACTION

(Plaintiff JOHNNIE L. COCHRAN, Jr. Against All Invasion of Privacy – False Light Publicity)

28. Plaintiff incorporates and realleges all of the previous allegations as though fully set forth herein.

29. As a result of the statements set forth in paragraphs 5, 6 and 9 above, defendants, and each of them, have published false and defamatory statements of fact which have placed plaintiff in a false light to the general public, and plaintiff, seeks compensatory and punitive damages against all defendants for invasion of privacy.

SIXTH CAUSE OF ACTION

(Plaintiff, JOHNNIE L. COCHRAN, Jr. Against All Defendants for Temporary Restraining Order, Preliminary and Permanent Injunctions)

30. Plaintiff incorporates and realleges all previous allegations contained in this Complaint as though fully set forth herein.

31. Plaintiff has a personal and property interest for which injunctive relief is available to protect in that he is in possession of an occupational position as an attorney and maintains the right to conduct the established business of the law firm, Cochran, Cherry, Givens & Smith, located at 4929 Wilshire Boulevard – the site at which defendants, and each of them, have published and continue to publish false and defamatory statements of fact on an ongoing basis.

32. As a result of the statements set forth in paragraphs 5, 6 and 9 above, defendants, and each of them, wrongfully and unlawfully picket outside plaintiff's place of business located at 4929 Wilshire Boulevard by (i) use of misleading, deceptive and untruthful statements on placards and (ii) which are also broadcast over blow horns and loudspeakers to passers by.

33. On a number of occasions, plaintiff has demanded that defendants, each of them, stop their unlawful conduct described above. Defendants, each of them, have refused and still refuse to refrain from their untruthful picketing conduct.

34. Defendants' wrongful conduct, unless and until enjoined and restrained by order of this court, has caused and will continue to cause great and irreparable injury to

plaintiff in that plaintiff's personal and professional reputation has been exposed to contempt and ridicule and his occupation as a reputable attorney damaged by defendants' continued publication of false and defamatory statements.

35. Plaintiff has no adequate remedy of law for the injuries done to his occupation and business suffered to date and on an ongoing basis if defendants' conduct is not restrained in that monetary damages, while being suffered, will be insufficient as well as difficult for plaintiff to precisely quantify and determine with respect to the permanent damage done to plaintiff's reputation and resulting losses to his business.

36. As a result of defendants' wrongful conduct, plaintiff and his business have been irreparably harmed through loss of clients and have suffered damage to their reputation within the community. Plaintiff will be further damaged in like manner so long as defendants' wrongful conduct continues. Plaintiff will state the specific amount on proof of the damages when it becomes known as the full amount of damage is not yet known to plaintiff because the unlawful picketing activity is presently ongoing.

WHEREFORE, plaintiff requests relief as hereafter provided.

WHEREFORE, PLAINTIFF PRAYS:

ON THE FIRST, THIRD, AND FIFTH CAUSES OF ACTION

1) For attorney's fees, investigation fees, and expert witness fees incurred herein;

2) For costs of suit incurred herein;

3) For special damages of economic losses according to proof;

4) For general damages in an amount to be determined according to proof at trial;

5) For exemplary damages against in an amount to be determined according to proof at trial;

6) For such other and further relief as the court deems just and proper;

ON THE SECOND AND FOURTH CAUSES OF ACTION

1) For attorney's fees, investigation fees, and expert witness fees incurred herein;

2) For costs of suit incurred herein;

3) For general damages in an amount to be determined according to proof at trial;

4) For exemplary damages against in an amount to be determined according to proof at trial;

5) For such other and further relief as the court deems just and proper;

ON THE SIXTH CAUSE OF ACTION

1) For an order requiring defendants to show cause, if any they have, why they should not be enjoined as set forth in this first amended complaint, during the pendency of this action;

2) For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining defendants, and each of them, and their agents, servants,

and employees, and all persons acting under, in concert with, or for them:

From picketing outside the premises of 4929 Wilshire publishing false, deceptive, and/or misleading statements depicted in placards and/or broadcast through blow horns and loudspeakers to passers by;

3) For special and general damages as may be ascertained and as are ascertained before final judgment in this action;

4) For costs of suit incurred in this action; and

5) For such other and further relief as the court deems proper.

Dated: October ___, 2001 NEMECEK & COLE

By: _____
JONATHAN B. COLE
Attorneys for Plaintiff
JOHNNIE L. COCHRAN, JR.

VERIFICATION

I, JOHNNIE L. COCHRAN, JR., am the plaintiff in the above-entitled action. I have read the foregoing first amended complaint and know its contents. The same is true of my own knowledge, except as to those matters that are alleged in the complaint on information and belief, and as to those matters, I believe them to be true.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October ___, 2001

JOHNNIE L. COCHRAN, JR.

ULYSSES TORY
5393 Fairiew Boulevard #3
Los Angeles, California 90056
(310) 649-1938
IN PRO PER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHNNIE L. COCHRAN, JR., Plaintiff, vs. ULYSSES TORY, and DOES 1 through 50 Inclusive, Defendants.	Case No. BC 239405 DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT FOR PRELIMINARY AND PERMANENT/TEMPORARY INJUNCTIONS RESTRAINING ORDER; (PROPOSED) VERIFIED FIRST AMENDED COMPLAINT FOR DAMAGES DATE: October 30, 2001 TIME: 8:30 AM DEPT: 41 Trial Date: March 18, 2002 (Filed Oct. 19, 2001)

Defendant, ULYSSES TORY (hereinafter referred to as "TORY) answers the complaint of Plaintiff, JOHNNIE L. COCHRAN, JR., by alleging as follows:

I. GENERAL DENIAL

1. Under the provisions of *Code of Civil Procedure* § 431.30, these answering Defendants deny generally and specifically each and every allegation contained in the

Complaint, and the whole thereof, and each and every alleged cause of action thereof and denies [sic] that the Plaintiff has sustained or will sustain any damages by reason of any act, breach or omission on the part of this answering Defendant.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

2. TORY allege that Plaintiff's Complaint, and the one & only cause of action therein, fails to state facts sufficient to constitute a cause of action against him, in accordance with the provisions of Code of Civil Procedure § 430.10 (e).

SECOND AFFIRMATIVE DEFENSE

(Injunction constitutes a Prior Restraint)

3. Defendant TORY is informed and believe, and based thereon allege, that the issuance of a preliminary and/or permanent injunction against his picketing activities as proposed in the Complaint would constitute an unconstitutional prior restraint.

THIRD AFFIRMATIVE DEFENSE

(Laches)

4. Defendant TORY is informed and believe and based thereon allege that Plaintiff is estopped from requesting preliminary and permanent injunctions against them by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

5. Defendant TORY is informed and believe and based thereon allege that Plaintiff's conduct relative to this answering Defendant and the relationship between this Plaintiff and th [sic] answering Defendant was such as to bring a Complaint against these answering Defendants with unclean hands, and as such is estopped from pursuing these injunctions.

FIFTH AFFIRMATIVE DEFENSE

(Frivolous Complaint)

6. Defendant TORY is informed and believe, and based thereon allege that the Complaint filed by Plaintiff against them was brought without reasonable care and without a good faith belief that there was a justiciable controversy under the facts and the law which warranted the filing of the Complaint against Defendant. Therefore, Plaintiff should be responsible for all of TORY's necessary and reasonable defense costs, including attorneys' fees, as more particularly set forth in *Code of Civil Procedure* § 1038.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

7. Defendant TORY is informed and believe, and based thereon allege that Plaintiff has waived its right to sue based on the alleged actions and omissions of the Defendants described in the Complaint because it has tolerated such alleged actions and omissions since 1985.

SEVENTH AFFIRMATIVE DEFENSE

(*Code of Civil Procedure* § 425.16)

8. Defendant TORY is informed and believe and based thereon allege that Plaintiff, in bringing this action, has infringed upon their rights in violation of *Code of Civil Procedure* § 425.16.

EIGHTH AFFIRMATIVE DEFENSE

(Truth and Privilege)

9. Defendant TORY assert that to the extent that Plaintiff claims defamation in its Complaint, truth is an absolute defense to such claims. As such, Defendant TORY is informed and believe, and based thereon allege that his statements, the statements of other Defendants in this action, and the statements on the placards are defensible as true.

10. In addition, Defendant TORY is informed and believe and based thereon allege that any statements made by them or other unnamed Defendants, as well as statements on their placards are privileged because they are in exercise of the Defendants' First Amendment rights.

NINTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

11. Defendant TORY allege that Plaintiff's Complaint for Preliminary and Permanent Injunctions is barred by applicable statutes of limitations, including, but not limited to Sections 338 and 340 of the *Code of Civil Procedure*.

WHEREFORE, DEFENDANT TORY pray that:

1. Plaintiff is denied its preliminary and permanent injunctions requested in its Complaint on file herein;

2. For attorney's fees, pursuant to *Code of Civil Procedure* § 128.5;

3. For costs of suit incurred herein; and

4. For such other and further relief as the Court may deem just and proper.

Dated: October 18th, 2001 /s/ By: Ulysses Tory
ULYSSES TORY

ULYSSES TORY
5393 Fairview Boulevard, #3
Los Angeles, California 90056
(310) 649-1938

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHNNIE L. COCHRAN, JR. Plaintiff, vs. ULYSSES TORY; and DOES 1 through 50, inclusive, Defendants.	) Case No. BC239405)) DEFENDANT TORY'S) OBJECTIONS TO STATE-) MENT OF DECISION) PURSUANT TO RULE) OF COURT SECTION) 232 AND CODE OF) CIVIL PROCEDURE) SECTION 632)) Date: April 24, 2002) Time: 8:30 a.m.) Dept: "41")) (Filed Apr. 11, 2002)

This action came on for trial of the equitable issues before this court, on March 19, 2002, March 20, 2002 and March 21, 2002, in Department 41, the Honorable Ronald Sohigian, presiding without jury. ULYSSES TORY ("TORY") appeared in pro per and Jonathan B. Cole, Esq. of Nemecek & Cole appeared as counsel for Plaintiff JOHNNIE L. COCHRAN, JR. ("COCHRAN"). The court, having heard and adjudicated the factual and legal questions determined that COCHRAN was entitled to the permanent injunctive relief he sought to preclude TORY from picketing and making false and defamatory written and oral comments about COCHRAN.

Oral and documentary evidence to said factual and legal questions was introduced on the behalf [sic] plaintiff and partially on the behalf of the defendant and the cause was argued and submitted for decision. The court having considered the evidence and heard the arguments, found that the facts and the law supported the issuance of a permanent injunction against TORY, and granted COCHRAN the injunctive relief he sought, as set forth in the separately filed Permanent Injunction.

TORY's objections to this permanent injunction is based on his believeth [sic] that the modification of his present picketing activities and writings/publications would be protected under the First Amendment (Freedom of Expression) to the United States Constitution and Fourteenth Amendment (Sections 5. and 1. Enforcement of Civil Rights Statues [sic]) of the United States Constitution. TORY further believes that COCHRAN is a public figure and therefore, must be held at a higher standard than a private citizen in a matter or issue of libel, slander and invasion of privacy.

TORY, while is not familar [sic] with all the technical rules of discovery, evidence, trial/hearing procedures and the law did his best to present his case fairly and honestly and, unlike the plaintiff's counsel who consistantly [sic] tried to take advantage of the defendant's position/situation.

TORY therefore, ojects [sic] to plaintiff's counsel interpretation of the Statement of Decicion [sic] as its contents reflects [sic] repetitive half truths, hearsay and speculation according to the court transcripts (Uncertified Rough Draft) herein attached, and upon the Defendant TORY makes his objections:

Page 2, line 27 objection

Page 3, lines 2 to 15 objection

Page 3 lines 21 and 22 objection

Page 3 line 28 objection

Page 4, line 12 objection

Page 4, lines 17 to 28 objection

page 5, lines 1 to 13 objection

Page 5, lines 15 and 16 objection

Page 5, lines 25 to 28 objection

Page 6 lines 1 to 6 objection

Page 6, line 21 objection

Pages 7; 8,9 and 10, lines 1 to 28 objection.

TORY believes that the issuance of a permanent injunction [sic] his modified picketing activities as proposed in this Statement of Decision would constitue [sic] an unconstitutional restraint.

Date April 11th, 2002 /s/ Ulysses Tory
ULYSSES TORY In Pro Per

[Uncertified Rough Draft Omitted In Printing]

ULYSSES TORY
5393 Fairiew Boulevard #3
Los Angeles, California 90056
(310) 649-1938

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOHNNIE L. COCHRAN, JR., Plaintiff, vs. ULYSSES TORY, and DOES 1 through 50 inclusive, Defendants.	Case No. BC239405 DEFENDANT TORY'S OBJECTION TO PERMANENT INJUNCTION Date: April 24, 2002 Time: 8:30 a.m. Dept: "41" Trial Date: March 18, 2002

(Filed Apr. 11, 2002)

WHEREAS, this action came on for trial on March 19, 2002, March 20, 2002 and March 21, 2002, in Department 41, the Honorable Ronald Sohigian, presiding without jury, and was tried on these dates;

WHEREAS, oral and documentary evidence was introduced on the behalf of the plaintiff and partially on the behalf of the defendant and cause was argued and submitted for decision;

The Court, having considered the evidence and heard the arguments of counsel, ULYSSES TORY ("TORY") objects to the issuance of a permanent injunction against him, employees, agents representatives, and all persons acting in concert, cooperation or participation with him, and further objects to the insert/named Ruth Craft, being named only in the Permanent Injunction as Ruth Craft

was not allowed to participate or defend herself at trial. (Page 3, line 4.)

Dated: April 11th, 2002 /s/ Ulysses Tory
ULYSSES TORY iIn [sic]
Pro Per

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOHNNIE L. COCHRAN, JR., Plaintiff, vs. ULYSSES TORY; and DOES 1 through 50, inclusive, Defendants	Case No. BC239405 The Honorable Ronald Sohigian **PERMANENT INJUNCTION** DATE: April 24, 2002 TIME: 8:30 a.m. DEPT: "41" TRIAL DATE: March 18, 2002 (Filed Apr. 24, 2002)

WHEREAS, the above-entitled cause came on regularly for trial on March 19, 2002, March 20, 2002 and March 21, 2002, in Department 41 of the above-entitled court, the Honorable Ronald Sohigian, Judge, presiding without jury, and was tried on that date;

WHEREAS, oral and documentary evidence was introduced on behalf of the respective parties and the cause was argued and submitted for decision;

The Court, having considered the evidence and heard the arguments of counsel and being fully advised, hereby

issues the following permanent injunction against ULYSSES TORY ("TORY");

Unless until this Court, after notice to JOHNNIE L. COCHRAN, JR. ("COCHRAN") and opportunity for him to be heard, modifies or vacates this order, it is ordered that TORY, and his employees, agents, representatives, and all persons acting in concert, cooperation or participation with him, including, but not limited to, Ruth Craft and any other co-conspirator, are permanently enjoined from engaging in any of the following:

1. Standing, assembling or approaching within three hundred (300) yards of (i) COCHRAN; or (ii) COCHRAN's place of business located at 4929 Wilshire Blvd., Los Angeles, CA 90010;

2. In any public forum, including, but not limited to, the Los Angeles Superior Court and any other place at which COCHRAN appears for the purpose of practicing law: (i) picketing COCHRAN and/or COCHRAN's law firm; (ii) displaying signs, placards or other written or printed material about COCHRAN and/or COCHRAN's law firm; (iii) orally uttering statements about COCHRAN and/or COCHRAN's law firm; and,

3. Contacting, harassing, threatening, stalking, disturbing the peace of, keeping under surveillance or blocking the movements of COCHRAN.

IT IS SO ORDERED.

DATED: April 24, 2002.

RONALD M. SOHIGIAN
RONALD M. SOHIGIAN
JUDGE OF THE LOS ANGELES
SUPERIOR COURT

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

	) Case No. BC239405
	) The Honorable Ronald Sohigian
JOHNNIE L. COCHRAN, JR.	) (Filed Apr. 24, 2002)
Plaintiff,	) STATEMENT OF DECISION PURSUANT TO *RULE OF COURT* SECTION 232 AND *CODE OF CIVIL PROCEDURE* SECTION 632
vs.	
ULYSSES TORY; and DOES 1 through 50, inclusive.	
Defendants.	) DATE: April 24, 2002 TIME: 8:30 a.m. DEPT: 41

The above-entitled cause came on regularly for trial of the equitable issue of plaintiff's request for injunctive relief, on March 19, 2002, March 20, 2002 and March 21, 2002, in Department 41 of the above-entitled court, the Honorable Ronald Sohigian, Judge, presiding without jury. Jonathan B. Cole, Esq. of Nemecek & Cole appeared as counsel for plaintiff JOHNNIE L. COCHRAN,

JR. ("COCHRAN"), and ULYSSES TORY ("TORY") appeared in pro per. The Court, having ordered this matter bifurcated on February 20, 2002, proceeded to hear and adjudicate the factual and legal questions necessary to determine whether COCHRAN was entitled to the permanent injunctive relief he sought to preclude TORY from picketing and making false and defamatory written and oral comments about COCHRAN in connection therewith.

Oral and documentary evidence material to said factual and legal questions was introduced on behalf of the respective parties and the cause was argued and submitted for decision. The Court, having considered the evidence and heard the arguments of counsel and being fully advised, found that the facts and the law supported the issuance of a permanent injunction against TORY, and granted COCHRAN the injunctive relief he sought, as set forth in the separately filed Permanent Injunction.

In so doing, the Court (as discussed at the February 20, 2002 status conference) "evaluate[d] the lawfulness of [TORY'S] picketing conduct" and, in connection therewith, was necessarily "required to make a determination as to the 'truthfulness' of the statements at issue" which did "in effect lead to findings with respect to COCHRAN's defamation and invasion of privacy causes of action" [Notice of Ruling re February 20, 2002 Status Conference]. As such, subsumed in the findings of fact and conclusions of law made by the Court for the purpose of determining the propriety of injunctive relief, are findings that, with the exception of the existence and amount of damages, all of the elements of the tort theories advanced by COCHRAN (libel, libel per se,

slander, slander per se, and invasion of privacy (false light)) were established concurrently with COCHRAN's establishing his right to equitable relief. The issues so subsumed in the equitable issue which has been tried by this Court need not (indeed may not) be retried (*Golden West Baseball Company v. City of Anaheim* (1994) 25 Cal.App.4th 11, 50; see also *Walton v. Walton* (1995) 31 Cal.App.4th 277; *Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 671; *Union Oil of California v. Reconstruction Oil Company et al.* (1943) 58 Cal.App.2d 30).

Based thereon, this Court hereby issues the following statement of decision:

1. This Court finds that COCHRAN is entitled to permanent injunctive relief as set forth in the separately filed Permanent Injunction because pecuniary compensation will not afford COCHRAN adequate relief and the restraint is necessary to prevent a multiplicity of judicial proceedings.

    a. This Court bases its decision on the following facts which it finds, based on admissible evidence offered and admitted at trial:

        (1) TORY retained COCHRAN on a contingency basis in early 1983 in the matter of *TORY, et al. v. City of Los Angeles, et al.*, Case No. C473 832;

        (2) On or about July 18, 1985, TORY, with the assistance of his putative wife, Ruth Craft ("Craft"), wrote COCHRAN a threatening letter accusing COCHRAN of conspiring against him and demanding $10 million dollars:

        (3) The July 18, 1985 letter in effect demanded that COCHRAN make payments of money to TORY, apparently as a return of legal fees that TORY and/or Craft paid to Earl Evans, Esq. ("Evans");

        (4) Evans was a space-for-services tenant in COCHRAN's law suite at 4929 Wilshire Boulevard and was not a partner of COCHRAN;

        (5) TORY and Craft knew and recognized that Evans and COCHRAN were not partners as evidenced by, among other things, the fact that all the checks for legal services rendered for TORY and/or Craft are made payable to Evans, not to COCHRAN;

        (6) The contents of the July 18, 1985 letter are inaccurate and constitute obviously unreasonable demands;

        (7) COCHRAN owes no money whatsoever to TORY;

        (8) TORY never paid COCHRAN any money at all for legal services or any other purpose;

        (9) COCHRAN responded to TORY's July 18, 1985 letter by letter dated July 30, 1985 and subsequently sought and obtained an order relieving him as counsel for TORY in the matter of *TORY, et al. v. City of Los Angeles, et al.*;

        (10) COCHRAN was justified in seeking to be relieved as counsel for TORY because it was essentially impossible for COCHRAN to continue to represent

TORY under the circumstances following the letter of July 18, 1985;

(11) TORY and Craft complained to the State Bar about COCHRAN and Evans, but the State Bar took no action except to tell them that their asserted grievances as to Evans and COCHRAN were fee disputes rather than disputes regarding disciplinable matters;

(12) TORY and Craft did not go forward with fee-related litigation or arbitration against COCHRAN or Evans;

(13) It is not true, as TORY alleged, that Evans' representation in various family law matters for Craft was deficient or that Craft prevailed in a federal court action regarding her child custody matters;

(14) What actually happened in connection with Craft's family law dispute according to Craft's own testimony is that she lost in the state court and lost in the federal courts after that, but that her former husband voluntarily turned the children over to her, which is no reflection at all on the quality of legal representation rendered by Evans;

(15) Beginning before January 2000 but also in and after January 2000 TORY and various agents of TORY have regularly picketed COCHRAN's office in Los Angeles at 4929 Wilshire Boulevard, and the Los Angeles Superior Court with placards;

(16) The placards used by TORY contain slogans such as (1) "Johnnie is a crook, a liar and a thief. Can a lawyer go to heaven? Luke 11:46"; (2) "Hey Johnnie How Much Did They Pay$$You to F_ _k Me?"; (3) "You've been a BAD, BAD boy, Johnnie Cochran"; (4) "Attorney COCHRAN We have no Use for Illegal Abuse"; (5) I Know How it Feels to be Terrorized; (6) Absolute Discrimination; (7) "Attorney Cochran, Don't We Deserve at Least the Same Justice as O.J.?"; (8) Unless You Have O.J.'s Millions You'll be Screwed if You Use J.L. Cochran, Esq."; (9) Johnnie L. Cochran, Esq., Your Piss is Not Rain; (10) "Attn: Attorney Johnnie L. Cochran, Jr., Flaunting and Flossing It's the People He's Costing"; (11) Attorney Johnnie, It's Past Time; (12) Johnnie Cochran I Know What You, the County and the city did [sic] my case"; and, (13) "Don't Laugh, Cochran Screwed You Guys Too." These slogans and the statements made therein are untruthful, misleading and malicious.

(17) After the commencement of this litigation, the conduct of TORY and his agents worsened as the band of picketers supplemented the placards with additional banners and loud chanting of obscene statements.

(18) The statements made by TORY and his agents also included statements to the effect that COCHRAN owed a substantial amount of money to TORY; that COCHRAN owed debts to TORY based

on breaches of past oral and written agreement that COCHRAN acted dishonestly or below the standard of care in prior legal representation of TORY; and that Cochran is a bad character and/or a substandard practitioner of law. These statements, too, are untruthful, misleading and malicious.

(19) COCHRAN is a public figure.

(20) All of the aforementioned statements made were false when they were made; were made maliciously and with reckless disregard for the truth; and were actually made for the purpose of inducing COCHRAN to pay TORY various amounts of money to which TORY was not entitled;

(21) All the people who were involved in the picketing, including but not necessarily limited to Craft, were the agents of TORY acting within the course and scope of their agency during the times that they were picketing, preparing signs, and speaking at the premises at 4929 Wilshire Boulevard, Los Angeles, and in front of the Los Angeles Superior Court courthouse.

(22) TORY and his agents, including but not necessarily limited to Craft, were aware of the falsity of the statements when they were made;

(23) The picketing conduct of TORY and his agents was intentionally targeted at preventing person(s) from entering COCHRAN's place of business for legal

services and creating a negatively charged and ominous environment.

(24) Despite repeated requests, TORY has refused to cease his picketing efforts unless he was paid a monetary "settlement" by COCHRAN.

(25) TORY and his agents and [sic] made false statements in the picketing, both expressly and impliedly, and orally and in writing.

(26) TORY has indicated that unless prevented by a judgment or some other process of this court he will continue to picket, and the Court finds that he would.

(27) This is not a matter of speech related issues: it is simply the use of false and defamatory and privacy-invading communications to coerce or attempt to improperly coerce payment of money in tribute for or premium for desisting from that type of activity.

(28) TORY has claimed to have no means by which a monetary award could be satisfactorily paid.

(29) COCHRAN has no remedy which is plain, speedy, and adequate except for injunctive relief.

(30) In the absence of injunctive relief, COCHRAN will be irreparably harmed by the conduct of TORY about which COCHRAN complains herein.

(31) TORY's behavior is not protectable and his conduct is enjoinable.

(32) The order for injunctive relief the court is making now is absolutely necessary in order to prevent a multiplicity of actions.

b. The legal basis for this Court's decision that COCHRAN is entitled to injunctive relief is:

(1) "[A] final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant; Where pecuniary compensation would not afford adequate relief; Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief; 3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings . . . "(*Civil Code* Section 3422; see also *Remillard-Dandini v. Dandini* (1941) 46 Cal.App.2d 678, 680);

(2) Picketing and use of banners and/or signs containing false and misleading allegations and orally uttering false and misleading statements support the grant of an injunction (*San Antonio Community Hospital v. Southern California District Council of Carpenters*, (1997) 125 F.3d 1230, 1237 citing *Mercy Health Services v. 1199 Health & Human Services Employees Union* (W.D. Mich. 1995) 888 F. Supp. 828, 838.)

(3) Reputation is "difficult to restore once it has been tainted" and hence injury to reputation is "irreparable" within the meaning or the requirements for injunctive relief (*Id.* at 1238).

(4) TORY's malicious picketing is likely to damage COCHRAN's professional reputation is for an improper purpose and, as such, is enjoinable.

2. This court finds that TORY and his agents engaged in libelous activity.

(a) This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial identified at paragraphs 1.a.(1) through (25), above.

(b) The legal basis for this Court's decision that TORY and his agents engaged in libelous activity is:

(1) California *Civil Code* section 45 defines "libel" as:

"a (i) false and (ii) unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, (iii) which exposes any person to hatred, contempt, ridicule, or obloquy, or (iv) which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

(2) The written statements made by TORY and his agents in connection with the picketing described above are false and unprivileged and had a tendency to injure COCHRAN in his occupation as an attorney.

(3) No recognized privilege pursuant to California *Code of Civil Procedure* section 47, or any other provision of law, applies to TORY's picketing actions, nor

can TORY support an affirmative defense of truth.

3. This Court finds that TORY and his agents engaged in libel per se.

a. This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial, identified at paragraphs 1.a.(1) through (25), above.

b. The legal basis for this Court's decision that TORY and his agents engaged in libel per se is:

(1) California *Civil Code* section 45a defines "libel *per se*" or "libel on its face" as; "a libel which is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact."

(2) The definition of "libel per se" is "very broad [and] include[s] almost any language which, upon its face, ha[s] a natural tendency to injure a person's reputation, either generally, or with respect to his occupation (*Bates v. Campbell* (1931) 213 Cal. 438).

(3) In construing language charged as libelous it is necessary to consider the publication as a whole (*Stevens v. Snow* (1923) 191 Cal. 58).

(4) The court in determining whether or not there is a libel *per se* "must place itself in the position of a reader under the circumstances of the publication." (*Rosenberg v. J.C. Penney Co.* (1939) 30 Cal.App.2d 609, 619; *Bettner v. Holt* (1886) 70 Cal. 270).

(5) Here, as in *Rosenberg, supra*, "the language and meaning of the placards are so plain that it was not necessary to resort to the innuendo and while some of the language may have been free from any libel, it is sufficient to support an action where the gist of the language contains the objectionable charge or insinuation, and here the charges upon the placards lead to the conclusion that plaintiff's were accused of dishonesty in dealing with their customers, thereby injuring the business and its good reputation." (*Id.* at 622.)

4. This Court finds that TORY and his agents engaged in acts which are both slanderous and slanderous per se.

a. This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial, identified at paragraphs 1.a.(1) through (25), above.

b. The legal basis for this Court's decision that TORY and his agents engaged in slander and slander per se is:

(1) California *Civil Code* section 46 defines "slander," in pertinent part as: "a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which: (1) Charges any person with crime, or with having been indicted, convicted, or punished for crime; . . . (3) Tends directly to injure

him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits; . . . or (5) Which, by natural consequence, causes actual damage."

(2) "Words which fall within the purview of *Civil Code* Section 46 are deemed to constitute slander per se (*Douglas v. Janis* (1974) 46 Cal.App.3d 931; *Contento v. Mitchell* (1972) 28 Cal.App.3d 356) with the effect that the utterance of such words is actionable without proof of special damage (*Correin v. Santos* (1961) 191 Cal.App.2d 844)" (*Albertini v. Shaefer* (1979) 97 Cal.App.3d 822, 829).

(3) "A fair construction of *Civil Code* section 46 requires a holding that calling an attorney a 'crook' is . . . actionable as slander per se . . . imputing dishonesty or lack of ethics to an attorney is also actionable under *Civil Code* section 46 because of the probability of damage to professional reputation (*Katz v. Rosen* (1975) 48 Cal.App.3d 1032)" (*Id.* at 829-830).

(4) TORY made false and unprivileged publications orally and through loudspeakers which tended to directly injure COCHRAN in respect to his profession, trade or business by imputing to him

general disqualification in those respects which the occupation of attorney at law peculiarly requires and by imputing things which have a natural tendency to lessen his profits.

5. This Court finds that TORY violated COCHRAN's privacy by creating publicity which placed him in a false light in the public's eye.

a. This Court bases its decision on the facts found, based on admissible evidence offered and admitted at trial, identified at paragraphs 1.a.(1) through (25), above.

b. The legal basis for this Court's decision that TORY and his agents engaged in "false light" invasion of privacy is:

(1) Courts recognize as tortious "invasion of privacy," publicity which places the plaintiff in a false light in the public eye, (*Kinsey v. Maeur* (1980) 107 Cal.App.3d 265, 270; see Prosser, *Law of Torts* (4th ed., 1971) s 117, pp. 804-814.)

(2) The interest protected by the false light invasion of privacy tort is individual freedom from the wrongful publicizing of private affairs and activities which are outside the realm of legitimate public concern. (See *Coverstone v. Davies* (1952) 38 Cal.2d 315, 323; *Stryker v. Republic Pictures Corp.* (1951) 108 Cal.App.2d 191, 194).

(3) "[T]he scope of an actionable invasion of privacy includes not only true but derogatory statements about an individual, but also statements that falsely

attribute offensive behavior to him." (*Selleck v. Globe* (1985) 166 Cal.App.3d 1123, 1135 citing *Gill v. Curtis Publishing Co.* (1952) 38 Cal.2d 273, 239 P.2d 630.)

(4) "Inasmuch as plaintiff's claim for false light invasion of privacy is based on the facts alleged in his claim for libel, he likewise is not required to plead special damages in order to state a cause of action for false light [invasion of privacy]." (*Selleck v. Globe* (1985) 166 Cal.App.3d 1123).

(5) TORY's publicized statements are not only false and defamatory in nature but falsely attribute offensive behavior to COCHRAN and have violated his right of privacy concerning his peace of mind to be free from such false publications.

DATED: APR. 24, 2002 RONALD M. SOHIGIAN
RONALD SOHEGIAN
JUDGE OF THE
LOS ANGELES
SUPERIOR COURT

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOHNNIE L. COCHRAN, Plaintiff and Respondent, v. ULYSSES TORY et al., Defendants and Appellants.	B159437 (Los Angeles County Super. Ct. No. BC239405) (Filed Oct. 29, 2003)

APPEAL from an order of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Davis Wright Tremaine, Gary L. Bostwick, Alonzo Wickers IV; Loeb & Loeb, Douglas E. Mirell and Jean-Paul Jassy for Defendants and Appellants.

Nemecek & Cole, Jonathan B. Cole and Karen K. Coffin for Plaintiff and Respondent.

A lawyer sued a former client for defamation and invasion of privacy. The lawyer prevailed, and the trial court (based on a finding that damages were inadequate under the circumstances) issued a permanent injunction. We reject the former client's challenges to the injunction and affirm.

FACTS

A.

In 1983, Ulysses Tory and Javier Gutierrez (who had been involved in a "shoot out" with the Los Angeles Police Department) retained Johnnie L. Cochran, Jr. to represent them in a personal injury action against the City of Los Angeles and others. Cochran filed the action and settled Gutierrez's claim, but not Tory's, and Tory became unhappy with the manner in which Cochran was representing him.

In July 1985, Tory wrote to Cochran, complaining that Cochran was conspiring with the City "to cover up criminal and immoral activities to private citizens for political gains. . . ." Tory said he would "settle" his conspiracy claims against Cochran and "refrain from any public discussions of conspiracy or scandal" if Cochran quickly paid him $10 million "or very close to it." Cochran, in turn, filed a motion to withdraw as Tory's lawyer, and the motion was granted in November. No fees were due (it was a contingency case) and none were paid.

B.

In July 1995 (after ten years of silence and at which time Cochran was receiving a great deal of publicity as one of the defense lawyers in O.J. Simpson's criminal trial), Tory again wrote to Cochran, demanded that Cochran return money that Tory had paid to Earl E. Evans, a lawyer who Tory said had "allegedly represented [Tory and his putative spouse, Ruth Craft] in matters of Divorce, Child Custody, Order to Show Cause and Union Bank!!!" Cochran did not respond.[1]

C.

In the late 1990's, Tory and a troop of people began picketing outside Cochran's office and outside the Los Angeles Superior Court, carrying placards with these statements:

> "Johnnie is a crook, a liar and a Thief. Can a lawyer go to HEAVEN? Luke 11:46"
>
> "Hey Johnnie, How Much Did They Pay $$ You to F--- Me?"
>
> "You've been a BAD BAD boy, Johnnie L. Cochran"

---

[1] Although Tory's letter referred to Evans as one of Cochran's "associates," there was no such relationship. During the 1980's, Evans was Cochran's tenant and paid for the space by providing limited legal services for Cochran. One such task was the "intake interview" when Tory first consulted Cochran in 1985, but Evans did not perform any other services for Cochran with regard to Tory's personal injury case (and that was the only case in which Cochran ever represented Tory). Evans, meanwhile had been directly retained by Tory and Craft to handle some family law matters.

"Att[orne]y COCHRAN, We have no Use for Illegal Abuse"

"I Know How it Feels to be Terrorized. God Bless USA"

"Absolute Discrimination"

"Attorney Cochran, Don't We Deserve at Least the same Justice As O.J.?"

"Unless You have O.J.'s Millions – You'll be Screwed if You USE J.L. Cochran, Esq."

"Johnnie L. Cochran, Esq., Your Piss is Not Rain"

"Attn: Attorney Johnnie L. Cochran, Jr., Flaunting and Flossing, It's the People He's Costing"

"Attorney Johnnie, It's Past Time!!!"

"Johnnie Cochran I Know WHAT You, the County and city DID to my CASE"

"DON'T LAUGH, COCHRAN SCREWED YOU GUYS TOO!"

What can I do if I don't receive the Justice the Constitution guarantees ME?

Of all the picketers, only Tory and possibly one other person had been Cochran's clients. Tory transported the picketers to Cochran's office and to the courthouse, bought lunch for all of them, and admitted the "possibility" that some of the picketers joined him only because they wanted a free lunch. In October 2000, while the picketing continued, Tory wrote to Cochran, demanded the return of $6,500 allegedly paid to Evans, and also demanded another $15,000 from Cochran to "compensate"

him for his "time and efforts to bring this entire matter to closure. . . ."

D.

Cochran filed this lawsuit against Tory in October 2000, alleging causes of action for defamation and invasion of privacy.[2] Tory answered, and represented himself throughout the trial court proceedings. A preliminary injunction was issued, discovery was conducted, and the case was tried to the court in March 2002. In its statement of decision, the trial court found that Cochran was entitled to a permanent injunction against Tory because Tory's statements were false and were made with knowledge of their falsity, "maliciously and with reckless disregard for the truth [and] for the purpose of inducing Cochran to pay Tory various amounts of money to which Tory was not entitled." The court enjoined Tory as follows:

> "[I]t is ordered that Tory, and his employees, agents, representatives, and all persons acting in concert, cooperation or participation with him, including, but not limited to, Ruth Craft and any other co-conspirator, are permanently enjoined from engaging in any of the following:
>
> "1. Standing, assembling or approaching within [300 yards] of (i) Cochran; or (ii) Cochran's place of business . . . ;

[2] The trial court found that, after "the commencement of this litigation, [Tory's conduct] worsened as the band of picketers supplemented the placards with additional banners and loud chanting of obscene statements."

"2. In any public forum, including, but not limited to, the Los Angeles Superior Court and any other place at which Cochran appears for the purpose of practicing law: (i) picketing Cochran [or] Cochran's law firm; (ii) displaying signs, placards or other written or printed material about Cochran [or] Cochran's law firm; (iii) orally uttering statements about Cochran [or] Cochran's law firm; and

"3. Contacting, harassing, threatening, stalking, disturbing the peace of, keeping under surveillance or blocking the movements of Cochran."

Tory (now represented by counsel and purportedly joined by Ruth Craft, who is restrained by the injunction in her capacity as Tory's agent) appeals.

DISCUSSION

I.

Tory contends "the second numbered paragraph" of the permanent injunction is a "particularly egregious" prior restraint and, as such, unconstitutional under both the federal and state constitutions. We disagree.

Although a prior restraint can be presumptively unconstitutional, that rule has no application where, as here, an injunction against a private person operates "to redress alleged private wrongs," not to suppress a legitimate publication. (*Organization for a Better Austin v. Keefe* (1971) 402 U.S. 415, 418-419.) The injunction in this case was issued based on the trial court's findings – after a full trial on the merits – that Tory's statements were both libelous and slanderous within the meaning of Civil Code

sections 45 and 46, and that pecuniary compensation would not afford an adequate remedy. As a result, the second numbered paragraph "was issued only after the [trial court] determined that [Tory] had engaged in [unlawful activity], and the order simply preclude[s Tory] from continuing [his] unlawful activity." (Cf. *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 138.)

As our Supreme Court explained in *Aguilar,* the special vice of a prior restraint is that it suppresses communication before there has been an adequate determination that the speech is unprotected under the First Amendment. Once there has been a final adjudication on the merits that the speech is unprotected, an injunction restraining that speech does not constitute an impermissible prior restraint. (*Aguilar v. Avis Rent A Car System, Inc., supra,* 21 Cal.4th at p. 141.) In *Aguilar,* the Court held that "the pervasive use of racial epithets that has been judicially determined to violate the FEHA is not protected by the First Amendment, and such unlawful conduct properly may be enjoined." (*Id.* at pp. 141-142.) By parity of reason, the same is true here, where the pervasive use of libelous and slanderous statements have been judicially determined to violate Civil Code sections 45 and 46.[3]

II.

Alternatively, Tory contends the second numbered paragraph is "unconstitutionally overbroad." This is so, he claims, because it means he cannot "[p]raise [Cochran] as

[3] The same is true under the California Constitution. (*Aguilar v. Avis Rent A Car System, Inc., supra,* 21 Cal.4th at pp. 142-145.)

the finest lawyer of Los Angeles," "[i]nform people that [Cochran] represented O.J. Simpson," "[w]rite a 'letter to the editor' criticizing the court's ruling below," "[r]epublish or read aloud the Court of Appeal's decision in *Cochran v. Cochran* [(1998)] 65 Cal.App.4th 488 . . . , where parties alleged that Cochran made a death threat against them," "[a]ppear in court to challenge the [i]njunction," or "[t]ell friends, at a picnic in a public park: 'Johnnie Cochran was not very nice to me.'" We disagree.

The cases cited by Tory all construe language in preliminary injunctions (*Paradise Hills Associates v. Procel* (1991) 235 Cal.App.3d 1528) or statutes, ordinances, and the like (*NAACP v. Alabama* (1964) 377 U.S. 288; *In re Berry* (1968) 68 Cal.2d 137; *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470; *Gooding v. Wilson* (1972) 405 U.S. 518; *Houston v. Hill* (1987) 482 U.S. 451; *Schad v. Mount Ephraim* (1981) 452 U.S. 61; *Airport Comm'rs v. Jews for Jesus, Inc.* (1987) 482 U.S. 569; *Welton v. City of Los Angeles* (1976) 18 Cal.3d 497), not permanent injunctions issued after a full trial on the merits and findings that the speech at issue is not protected. For the reasons explained in Part I, *ante,* Tory's cases have nothing to do with the permanent injunction issued in this case.

Based upon his prior unlawful conduct and his admissions in court that, absent restraint by the court, he would continue to picket Cochran, Tory has no basis for his challenge to the breadth of the injunction.[4]

[4] When asked whether he intended to keep picketing Cochran until Cochran paid him, Tory said, "It's a possibility." The court followed-up by asking Tory, "Do you desire to do more picketing of Mr. Cochran or with respect to your grievance against Mr. Cochran at any time at any place? . . . I just mean as things are today, no changes of position on

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III.

Tory contends the judgment is not supported by substantial evidence because (according to Tory) the evidence establishes only that he stated his opinion, not that he made "provably false" statements of fact. We disagree.

Substantial evidence shows that Tory "crossed the line separating protected rhetorical hyperbole from unprotected fraudulent misrepresentations of fact." (*San Antonio Hosp. v. So. Cal. Council of Carpenters* (9th Cir. 1997) 125 F.3d 1230, 1237.) Tory's statements – such as, "Hey, Johnnie, how much did they pay $$ you to f--- me?" and "Johnnie Cochran, I know what you, the County and City did to my case," and "Johnnie is a crook, a liar and a thief," accuse Cochran of theft and of accepting money as a bribe to abandon Tory's case against the City and the County and, as such, constitute libel within the meaning of Civil Code section 45 – because a false statement reasonably calculated to induce the reader to understand that a person is guilty of a crime or is dishonest in his profession is sufficient to establish libel. (*Gallagher v. Chavalas* (1941) 48 Cal.App.2d 52, 59; *Goehring v. Wright* (N.D.Cal. 1994) 858 F.Supp. 989, 1004; 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 471, p. 558; §§ 482-484, pp. 566-572.) No more was required. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 872-873.)[5]

anybody's part except, are you going to want to do more picketing . . . of Mr. Cochran with respect to these grievances at any place, at any time?" Tory answered, "I'm quite sure, Your Honor, I will protest against Mr. Cochran. . . . Yes. . . . Unless you order us not to."

[5] We summarily reject Tory's suggestion that the "context" of his statements shows they were mere opinion. In context, Tory was

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IV.

In a related argument, Tory contends the evidence is insufficient to establish that he acted with actual malice. Again, we disagree.

Assuming without deciding that Tory is entitled to the same protections afforded to a legitimate newspaper defending a libel action, and assuming that Cochran is (as he willingly concedes) a public figure, and thus assuming that this is a case in which we must review the evidence de novo to determine whether it supports the trial court's finding of actual malice (*Bose Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 514; *McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 842), we are satisfied that Tory acted with actual malice. Uncontroverted evidence establishes that Cochran did not owe any money to Tory, that Tory knew his statements were all false, and that he nevertheless set out to harass Cochran by hiring picketers to carry outrageous placards and repeatedly march in front of Cochran's office building and in front of the Los Angeles Superior Court. Under any standard, this is more than enough to show actual malice.

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demanding money that wasn't owed to him, which to us supports the trial court's finding that Tory intended to go to any length to slander Cochran, and that he knowingly made false statements of fact.

DISPOSITION

The permanent injunction is affirmed. Cochran is entitled to his costs of appeal.

NOT TO BE PUBLISHED.

VOGEL (MIRIAM A.), J.

We concur:

ORTEGA, Acting P.J.

MALLANO, J.

Court of Appeal, Second Appellate District,
Division One – No. B159437
S121121

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JOHNNIE L. COCHRAN, Plaintiff and Respondent,

v.

ULYSSES TORY et al., Defendants and Appellants.

(Filed Jan. 28, 2004)

Petition for review DENIED.

George C.J., was absent and did not participate.

Kennard, J. and Brown, J., are of the opinion the petition should be granted.

/s/ WERDEGAR
Acting Chief Justice